

In support thereof, Krowel, through counsel, states the following:

1. On May 23, 2017, Carter, on behalf of Arcuri filed the Motion for Stay Relief. (ECF #7).
2. On May 24, 2017, the Clerk's office of the Court issued a *Notice Of Nonevidentiary Hearing* (ECF #8) (hereinafter "May 24, 2017 Order") to Carter. The aforesaid notice states in pertinent part as follows:

THE MOVING PARTY IS RESPONSIBLE FOR:

1. Serving a copy of this notice upon all parties entitled to notice forthwith;
2. Filing a certificate of service with respect to this notice seven (7) days after the date of issuance set forth below. If the hearing date is less than seven (7) days from the date of issuance, the certificate of service must be filed no later than the time of the hearing. **If the movant fails to timely file a certificate of service, the court may deny the motion without a hearing.**

[Emphasis in the original.].

3. A true and accurate copy of the May 24, 2017 Order is attached hereto and incorporated incorporated herein in its entirety by reference as Exhibit "1".
4. Carter, on behalf of Arcuri, failed to comply with the May 24, 2017 Order by May 31, 2017, instead filing the same on June 15, 2017, *fifteen (15) days too late*. (ECF #18).
5. A true and accurate copy of the filing of Carter with respect to the May 31, 2017 Order is attached hereto and incorporated herein its entirety by reference as Exhibit "2".

6. This IS NOT the first time that this Court has admonished Carter. At a December 8, 2016 hearing in Krowel's husband's prior, chapter 7 bankruptcy case styled *In re Nicholas J. Fiorillo*, Chp. 7, United States Bankruptcy Court for the District of Massachusetts – Central Division, Case No. 4:10-bk-44179-CJP, this Court, Christopher J. Panos, J. stated the following:

And this isn't the only time that this creditor has not precisely followed the rules noting by reference this action in the Krowel case where the creditor with actual notice determined to precede [sic] with an auction¹, so the court is going to deny the motion of the creditor for sanctions against the debtor and for sanctions against Mr. Ehrhard.

[Emphasis in the original.].

Transcript of December 8, 2016 Hearing, p. 6, lines 285-88.

7. A true and accurate of the relevant portion of the aforesaid Transcript of the December 8, 2016 hearing is attached hereto and incorporated herein in its entirety by reference as Exhibit "3".

WHEREFORE, Debtor, Tracy Krowel prays that this Honorable Court:

1. Enter a finding that Carter, and thus Arcuri, failed to comply with this Court's May 24, 2017 Order by timely serving a copy of the *Notice Of Nonevidentiary Hearing*, entered on May 24, 2017 (ECF #8);
2. Enter an Order denying the *Motion Of Santo Arcuri For Relief From The Automatic Stay And To Dismiss Case* (ECF #7);

¹ This is the very same auction of Debtor's residence that is at issue in this Chapter 13 bankruptcy case.

3. Enter an Order cancelling the 1:00 p.m., June 22, 2017 hearing upon the *Motion Of Santo Arcuri For Relief From The Automatic Stay And To Dismiss Case*;
4. Enter an Order relieving the Debtor, Tracy Krowel from having to respond to the *Motion Of Santo Arcuri For Relief From The Automatic Stay And To Dismiss Case*, and
5. For such other and further relief as this Honorable Court deems just and appropriate.

TRACY KROWEL,

By her attorney,

/s/ Neil Kreuzer

Neil Kreuzer – BBO #630976

Law Office of Neil Kreuzer

268 Newbury St., 4th Floor

Boston, MA 02116-2424

Tel: 1-(617)-739-9700

Fax: 1-(617)-739-8484

Email: nkreuzer@aol.com

Date: June 16, 2017

CERTIFICATE OF SERVICE

I, Neil Kreuzer, hereby certify that the within document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF and paper copies will be sent to those indicated as non-registered participants on June 16, 2017, as set forth hereinbelow if any there be.

/s/ Neil Kreuzer

EXHIBIT “1”

Nonevidentiary hearing Page 1 of 1
UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In Re: Tracy Krowel
Debtor,

Chapter: 13
Case No: 17-40948
Judge Christopher J. Panos

NOTICE OF NONEVIDENTIARY HEARING

PLEASE TAKE NOTICE that a **HEARING** will be held on **6/22/17 at 01:00 PM** before the Honorable Judge Christopher J. Panos, Courtroom 3, Harold Donohue, Federal Building and Courthouse, 595 Main Street, Worcester, MA 01608 to consider the following:

[7] Motion of Creditor Santo Arcuri for Relief from the Automatic Stay (49 Olde Colony Drive, Shrewsbury, MA) and To Dismiss Case.

OBJECTION/RESPONSE DEADLINE: JUNE 16, 2017 4:30 pm

If no deadline is set, the objection/response deadline shall be governed by the Federal Rules of Bankruptcy Procedure (FRBP) and the Massachusetts Local Bankruptcy Rules (MLBR). If no objection/response is timely filed, the Court, in its discretion, may cancel the hearing and rule on the motion without a hearing or further notice. See MLBR 9013-1(f).

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NOTICE TO ALL PARTIES SERVED:

1. **Your rights may be affected.** You should read this notice, the above referenced pleading and any related documents carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.
2. Any request for a continuance **MUST** be made by **WRITTEN MOTION** filed and served at least one (1) business day prior to the hearing date. See MLBR 5071-1.
3. The above hearing shall be nonevidentiary. If, in the course of the nonevidentiary hearing, the court determines the existence of a disputed and material issue of fact, the court will schedule an evidentiary hearing. If this is a hearing under section 362, it will be a consolidated preliminary and final nonevidentiary hearing unless at the conclusion thereof the court schedules an evidentiary hearing.

Date:5/24/17

By the Court,

Halina Magerowski
Deputy Clerk
508-770-8927

Emergency Closings: To find out if the Court will be closed in case of stormy weather or other emergency, dial (617) 748-5314 or (866) 419-5695 (toll free) for a recorded message.

EXHIBIT “2”

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In re:

TRACY KROWEL

Debtor.

Case No. 17-40948-CJP
Chapter

CERTIFICATE OF SERVICE

I, Evans J. Carter, hereby certify that, on June 15, 2017, I served a true and correct copy of the *Notice of Non-Evidentiary Hearing* attached hereto as Exhibit A by first class mail, postage prepaid, upon each of the parties on the attached service list **not** noted as having received electronic notice on the electronic filing receipt.

/s/ Evans J. Carter

Evans J. Carter

Service List

Office of The U.S. Trustee
446 Main Street
Worcester, MA 01608

Tracy Krowel
49 Olde Colony Drive
Shrewsbury, MA 01545

Neil Kreuzer
268 Newbury St. 4th Floor
Boston, MA 02116

Exhibit A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In Re: Tracy Krowel
Debtor,

Chapter: 13
Case No: 17-40948
Judge Christopher J. Panos

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3. The above hearing shall be nonevidentiary. If, in the course of the nonevidentiary hearing, the court determines the existence of a disputed and material issue of fact, the court will schedule an evidentiary hearing. **If this is a hearing under section 362,** it will be a consolidated preliminary and final nonevidentiary hearing unless at the conclusion thereof the court schedules an evidentiary hearing.

Date: 5/24/17

By the Court,

Halina Magerowski
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EXHIBIT “3”

because of advocacy, and rule 9011 in 17 years I've never even seen a Motion like this against me. But in this case, Mr. Fiorillo has independent rights to a homestead and as a resident of that house and if you see the make a ruling on the status of Mr. Fiorillo's status on that house

.....
[Per my instructions, this section of the tape was listened to but not transcribed, per instructions, as same was expressed to me as "irrelevant" and time did not allow transcribing same. The remainder of the tape was related to Mr. Fiorillo's bankruptcy.]

CONCLUSION:

Judge: "I've considered all of the submissions by the parties. I have reread the original Motion to Affirm and Enforce. I've reviewed the response. I've reviewed the opposition to the first request for sanctions which was not the procedure 9011. I've reviewed. I've listened carefully to counsel today and I've gone back and reviewed a number of pleadings including schedules.

Under Rule 9011C, The court may sanction an Atty who files a paper pleading which contains frivolous purpose. In deciding whether actions of an Atty warrant sanctions.
The court is mindful of the purpose sanctions may serve
The harm sanctions may cause.

Judge Feeney sometime probably in the last year in the last year that
That sanctions for violating 9011C1A may be initiated against
Or by the court sua sponte under 9011C1B preclude or request sanctions
Unless the other party
The so called safe harbor provisions of 9011 require a party seeking sanctions under the rule
serve a separate on the attorney
Who is the target of the attorney 21 days before it's acted upon the court. That is to give the
other attorney the opportunity to withdraw the offensive pleading. Safe harbor must be strictly
enforced and that including circumstances where a motion has been ordered

Schafer Salt 53290 Brickward Contractors 369F3rd 385.

Although this court agrees that courts should deline to draw a bright line or if it's been
withdrawn and that technical compliance can be excused in certain instances see Cardillo 402
The present case does not present circumstances for
The motion itself was withdrawn at the hearing on the Motion that was approximately 23 days
after a request for sanctions was served, not properly as a separate motion but a part of the
motion.

It's significant to the court that creditors preceded prematurely and in a procedurally improper
fashion when the sought sanctions.

**And this isn't the only time that this creditor has not precisely followed the rules noting by
reference the action in the Krowel case where the creditor with actual notice determined to
precede with an auction, so the court is going to deny the motion of the creditor for sanctions
against the debtor and for sanctions against Mr. Ehrhard. However the court does have the
ability on its own initiative to consider sanctions. While the court finds that it would be not
appropriate to excuse**

The court finds that on this record and on its own initiative of its own record that it is appropriate
to show cause as to why the debtor and Mr. Ehrhard should not be sanctioned for filing the
motion for, to affirm and enforce the homestead claim by the debtor. Mr. Ehrhard has indicated
today that his position is that because of the shifting of ownership as determined in various

I, Deborah White, do hereby certify that the foregoing is a true and accurate transcript, prepared to the best of my ability, of the designated portions of the cassette provided to me by of a hearing of the Worcester Division of the U. S. Bankruptcy Court, Case #10-44179 – Motion of the Creditor Santo Arcuri Under Bankruptcy Rule 9011 for Monetary Sanctions, December 8, 2016.

December 26, 2016

Deborah White

Deborah White
Legal Transcriptionist.